

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Tomoyuki Iwabuchi et al. Art Unit : 2828
Serial No. : 10/743,342 Examiner : David Hung Vu
Filed : December 23, 2003 Conf. No. : 4708
Title : LIGHT EMITTING DEVICE AND ELECTRONIC EQUIPMENT (AS AMENDED)

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO ACTION OF APRIL 14, 2006

Claims 1-3, 7, 8, 11, 12, and 15-21 are pending, with claims 1, 2, and 12 being independent. Claims 1, 3, 7, 16, and 19 have been withdrawn.

Applicant acknowledges with appreciation the Examiner's allowance of claims 2, 8, 11, 17 and 20.

Claims 12, 15, 18, and 21 have been provisionally rejected for obviousness-type double patenting as being obvious over claims 1-4, 7, 14-17, and 23-28 of U.S. Publication No. 2004/0263056 (the '056 publication). The '056 publication was filed on June 23, 2004, and the pending application was filed on December 23, 2003. Because the provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the pending application (which is the earlier-filed application), and because the '056 application has not yet been examined (such that the '056 application remains rejectable on other grounds), applicant requests that the Examiner withdraw this rejection and permit this application to issue as a patent without a terminal disclaimer, as set forth in MPEP §804.I.B.1, which states:

“If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.”

Applicant has made this argument previously. In response, the rejection emphasizes that one purpose of the double patenting rejection is to prevent possible harassment by multiple assignees. While applicant agrees that this is one of the purposes, applicant respectfully submits

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that this purpose is served by the PTO-mandated policy of withdrawing the double patenting rejection in this matter. In the event that the claims of the '056 patent, once they are otherwise found to be allowable, are found to be so close to the claims of the present application that a double patenting rejection is in order, the double patenting rejection can be issued in the '056 patent and, assuming that the double patenting rejection is correct, a terminal disclaimer can be filed in the '056 patent to prevent the risk of harassment by multiple assignees.

In conclusion, applicant submits that all pending claims are in condition for allowance.

The fee in the amount of \$910 for the one-month extension of time fee (\$120) and the request for continued examination fee (\$790). The fees are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 8/14/06

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